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SIPDIS

DEPARTMENT FOR EUR/CACEN (JMUDGE), L/EUR
USOSCE FOR K. BRUCKER

SENSITIVE

E.O. 12958: N/A
TAGS: PGOV PREL KZ POLITICAL
SUBJECT: KAZAKHSTAN: NEW LAW CHANGES STATUS OF INTERNATIONAL
AGREEMENTS

¶1. (SBU) Summary: According to local human rights
activists, Kazakhstan's new law "On the International
Agreements of the Republic of Kazakhstan," signed by
President Nazarbayev on May 30, may challenge the principle
of supremacy of international agreements over domestic
legislation in Kazakhstani law. Specifically, Article 20
subjects international agreements to change when they are
found to conflict with domestic law. End Summary.

Supremacy No Longer an Assumption

¶2. (SBU) Article 4, Section 3 of the Kazakhstan Constitution
states that "(i)nternational treaties ratified by the
Republic shall have priority over its laws and be directly
implemented except in cases when the application of an
international treaty shall require the promulgation of a
law," establishing the primacy of international agreements,
at least where ratification is necessary. Paragraph 2 of
Article 20 of the new law, however, states that "(i)n case
of a conflict of international treaties of the Republic of
Kazakhstan with the legislation of the Republic of
Kazakhstan, international treaties of the Republic of
Kazakhstan are subject to alteration, suspension or
termination in their operation."

¶3. (SBU) Articles 27-30 of the new law enumerate procedures
for changing, terminating, suspending and denouncing
international agreements to which Kazakhstan is a party.
Generally, suspension or denunciation of an agreement
ratified by Parliament must be done with Parliament's
assent. In other cases, this is accomplished by the
Kazakhstani official responsible for the agreement, be it
the President, Prime Minister or senior official of the
state body that is a party to the affected agreement. These
Articles also contain a commitment to observe "standards of
international law" in these processes, but this is not
elaborated.

¶4. (SBU) The language of the aforementioned Articles is made
somewhat confusing by the use of a single Russian word
(dogovor) for all types of international agreements
throughout the text. In most places in the text, the law
distinguishes between agreements ratified by Parliament and
those entered into on the authority of the President, the
Prime Minister or a central state body. However,
distinctions between treaties and executive agreements under
this law are only apparent through interpretation. As a
result, human rights activists believe that the law's
references to "standards of international law" are not as
clear as they might appear at first reading.

Reaction

¶5. (SBU) Several legal analysts, including well-known human
rights advocate Yevgeniy Zhovtis, have publicly questioned
the government's motivation for passing the law. They note
that the legislation undermines the basis of all legal
systems - the concept of the hierarchy of authorities.
Zhovtis publicly questioned why this law was only reported
in the press -- and very quietly -- after the President
signed it.

To What Result?

¶6. (SBU) Comment: There are several theories about the
GOK's motivation for this legislation -- from undoing
"friendship" agreements with CIS countries undertaken after
the fall of the Soviet Union, to renegotiating petrochemical
agreements. It may also be a simple effort to fill a gap in
Kazakhstan's legislative framework. Regardless of the
motive, human rights activists believe that the legislation
may undermine fundamental principles of international law.
It is also an open question whether a constitutional issue
will eventually arise if a ratified treaty is alleged to

conflict with the domestic law of Kazakhstan. Post
understands that OSCE may be performing an analysis as well,
which we would welcome. Post will continue to seek

clarification of the GOK's intentions.

¶7. (U) Minimize for Dushanbe considered.

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